

**Virg Bernero**  
Mayor



City Hall - 9th Floor  
124 W. Michigan Avenue  
Lansing, MI 48933-1694  
PH: 517.483.4141 – FAX: 517.483.6066  
Lansing.Mayor@lansingmi.gov

**OFFICE OF THE MAYOR**  
CITY OF LANSING, MICHIGAN

June 15, 2017

The Honorable Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

**RE: Notice of Proposed Rulemaking (NPRM) on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.  
WT Docket No. 17-79**

Dear Secretary Dortch:

The City of Lansing is in full support of new technology to move our region forward. The Metro Lansing area is home to numerous industries that are leaders in technology and require cutting edge telecommunication and data resources. Lansing is the home to some of the world's most technologically advanced automotive manufacturing facilities, including the General Motors Grand River and the Lansing-Delta Assembly Plants. Those plants are supported and supplied by some equally technically advanced businesses.

The City and the neighboring City of East Lansing are home to several higher education facilities including Michigan State University, the home of the Facility for Rare Isotope Beams and National Superconducting Cyclotron Laboratory.

The City desires the deployment of this new technology in concert with our current purview of safety, policing and managing the placement of any utility or other use of public space within our governmental boundaries and right-of-ways, in order to ensure the safety of our citizens and the reasonable and fair use of these areas by often competing interests.

The City is concerned that Federal implementation of an action, such as the "Deemed Grant" rule, would remove local control and management of the City's rights-of-way and imperil the above-discussed goals and interests. Further it would elevate one broadband technology to an authority and power above all other public and private utilities and uses, a power we feel the FCC does not have the authority to exercise.

In keeping with the City's principle of equal treatment of all utilities within the City's rights-of-way, broadband has and will continue to be treated like all other utilities accessing the public right-of-way. The City has worked with members of the industry to share and exchange knowledge of each other's interests, concerns, and points of view. Through those discussions we have created agreements that protect both parties and apply reasonable fees. The FCC must take into consideration the many agreements that have already been approved, through a lot of hard work by communities such as Lansing and the members of the industry.

The following are some additional brief points describing the City's concerns for the public record.

**Deemed Granted:**

- Supersedes the legal authority and jurisdiction of the United States Department of Transportation-Federal Highway Administration, States and Local Communities to ensure the public's health, welfare, and safety. Based on information and belief the United States Congress has not granted the FCC this power.
- Existing laws, rules, regulations and requirements set forth by the United States Department of Transportation, State Highway Departments and Local Authorities such as County Road Commissions already address the reasonable accommodation of utilities within the public right-of-way. To supersede them would be to impair the police power of these entities to oversee and control such access and use in violation of the 10<sup>th</sup> Amendment of the United States Constitution.
- Antennas and associated equipment, under the "deemed granted" rule, bypasses other public and private utilities in the regulatory process which effectively allows federal regulators to set local priorities. FCC powers not authorized by the U.S. Congress are a violation of the 10<sup>th</sup> Amendment.
- The proposed "Deemed Granted" rule transfers the liability for approving the location and safety requirements of poles, towers and antennas within the local public right-of-way to the FCC in violation of the Congressional spending power. Congress has not approved such Federal liability, which brings into question the ability of the FCC to do this.
- The term "act" regarding the "failure to act" (page 4, II, A, 1 "Deemed Granted") is not defined, it is the City's interpretation that "act" means "approval" or "denial" of the application. What does the FCC mean by "Failure to Act"? For many reasons, including those set forth above, it cannot mean "approval" of an application.
- The laws, rules, and regulations governing location, placement, construction, operation and maintenance for the utilities of all stripes within the public right-of-way have been established in Michigan and there is substantial law governing these relationships. The construction of antennas and their related infrastructure are not significantly different enough to require a whole new regulatory scheme, and should adhere to existing requirements and process.

- If the FCC overrules FHWA, State, and Local authorities, which covers every other utility-type user of the rights-of-way, then it promotes unnecessary conflict between these various entities and the FCC.
- Reference: United States Department of Transportation-Federal Highway Administration: Utility Relocation and Accommodation: A History of Federal Policy Under the Federal-Aid Highway Program. Part II: Utility Accommodation, June 1980, James E. Kirk, Special Consultant. <https://ntl.bts.gov/lib/12000/12200/12229/12229.pdf>

### **Existing Laws to Consider:**

- State of Michigan Constitution of 1963 - Section 22: Charters , Resolutions Ordinances; Enumeration of Powers:
  - Authorizing local government the ability to control and regulate its municipal concerns and properties.
- State of Michigan Constitution of 1963 - Section 29: Highway, Streets, Alleys, Public Places: control, use by public utilities.
  - Gives corporations, public or private utilities the right to operate in the public right-of-way only with the consent of the local government.
- State of Michigan – Highway Obstruction and Encroachment: Use of the Highway By Public Utilities. Act 368 of 1925, 247.183, Section 13(1)
  - Follows Section 29 of the Constitution in that rights are given to utilities with reasonable accommodations, but requiring the permission and approval of local government.
- State of Michigan – Home Rule Act. Act 279 of 1909 Section 117.4h-Public Ways; permissible charter provisions, 4-h(1).
  - Gives the City of Lansing the right to regulate and control the surface of its streets and public ways, and the space above and below.
- There exists an overwhelming body of State Law that guarantees utilities reasonable access to public right-of-ways and requires the permission of the public entity responsible for the right-of-way. Important state policy has been developed on these issues over the years and enacted into statute.
- All utilities must be treated equally under the law to comply with both State and Federal requirements.

The City appreciates the long hours, hard work and responsibilities of the FCC and hope that these brief comments will help in your work. If you wish to discuss this issue or have any questions, please contact me at 517-483-4141.

The comments are being filed electronically pursuant to Section 1.1206 of the Commission's Rules. Please contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy Hannan", with a long horizontal flourish extending to the right.

**Randy Hannan**

Executive Assistant/Chief of Staff  
Office of Mayor Virg Bernero